

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CM(M) No. 182/2023

1. Prem Nath, age 52 years, S/oPetitioners/Appellants
late Shri Munshi Ram, R/o
Village Dinga Amb, Tehsil
Dinga Amb, District Kathua,
J&K.

Through: Mr. K. S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate

Vs

1. Joginder Kumar S/o Omkar Nath
2. Aman Abrol alias Mithu, S/o Joginder Kumar
3. Pushpa Devi, W/o Joginder Kumar
--All residents of Dayala Chack Tehsil
Hiranagar, District Kahtua.
4. Meenakshi W/o Krishan Sharma, D/o
Rattan Chand, R/o Dinga Amb, Tehsil
Dinga Amb, District Kathua.
5. Kuldeep KumarRespondents
6. Yog Raj
7. Raj Kumar
8. Vijay Kumar
9. Ram Murti
10. Lachman Dass
-All sons of late Munshi Ram
11. Shanti Devi W/o Lt. Munshi Ram, all
residents of village Dinga Amb District
Kathua.Proforma respondents

Through: None

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER (ORAL)

29.09.2023

- 1) The petitioner has challenged order dated 25.08.2023 passed by the learned Civil Judge (Senior Division)/CJM, Kathua (hereinafter to be referred as the trial Court), whereby application of respondents/defendants seeking permission to place on record certified true copy of demarcation/status report dated 19.01.2023 prepared by the Sub Divisional Magistrate, Hiranagar has been allowed.
- 2) It appears that the petitioner and proforma respondents filed a suit before the trial court seeking a permanent prohibitory injunction restraining the respondents from interfering in their possession over the land measuring 07 kanals and 12 marlas comprised in Khasra No.2702/1740, situated at village Dinga Amb, District Kathua.
- 3) During the pendency of the said suit, an application was made by the contesting respondents/defendants seeking permission to place on record certified true copy of the demarcation/status report dated 19.01.2023 filed by the Sub Divisional Magistrate, Hiranagar before this Court in a writ petition bearing WP(C) No. 2489/2021, titled, Pran Nath and ors. vs. Union Territory of J&K and ors. In the application it was pleaded by the defendants that demarcation/status report sought to be produced by the defendants is a relevant document and is required to be considered before disposal of the application filed by the defendants under Section 10 of the CPC. The learned trial court after hearing the parties, passed the impugned order

allowing the application of the defendants, thereby permitting them to place on record the certified true copy of the demarcation/status report.

4) The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution to lay a challenge to the aforesaid order of the trial court on the ground that the petitioner has already submitted his objections to the status report before this Court and as such, the legality and veracity of the said status report/demarcation report is yet to be decided by this Court. It has been further submitted that the report has not attained finality, as such, it was not open to the learned trial court to treat the same as a gospel truth and take it on record. It has been also contended that the impugned order passed by the learned trial court is without application of mind as according to the petitioners, taking on record the demarcation/status report, has a serious bearing on the merits of the case. It has also been submitted that the facts mentioned in the demarcation report/status report dated 19.01.2023 are ambiguous and contrary to the true factual position, therefore, the same cannot be relied upon. It is also contended that the impugned order passed by the learned trial court is contrary to the provisions contained under Order 8 Rule 1A and Order 13 Rule 1 of the CPC.

5) I have heard learned Senior Counsel for the petitioner and perused the record of the case. I have also gone through the order impugned passed by the learned trial court.

6) Order 8 Rule 1A of the CPC casts a duty upon the defendant to produce documents upon which relief is claimed by him. Sub Rule (1) of the said Rule provides that the documents shall be produced in the Court when

the written statement is presented by the defendant. Sub Rule (3) however, permits the defendant to produce a document, which ought to be produced in Court by him alongwith his written statement but has not been produced with the leave of the Court. Order 13 Rule 1 of CPC provides that the parties have to produce all documentary evidence in original on or before settlement of the issues, if copies thereof have been filed alongwith the plaint or written statement.

7) From a perusal of the aforesaid provisions, it is clear that the defendant has normally to produce all his documents on which he places reliance alongwith his written statement and he can produce the original documents before the settlement of the issue, if copies thereof have been filed by him with the written statement. It is also clear that with the leave of the Court, the documents can be produced by the defendant even after filing of the written statement.

8) It is a settled law that a document can be produced at a later stage of the proceedings, if there is no reason to doubt the genuineness of the document. The Supreme Court in the case of **Sugandi vs. P Raj Kumar, 2020 (10) SCC 706** has, held that if procedural violation does not seriously caused prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. The Court further went on to observe that litigation is nothing but a journey towards truth, which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was held that the Court should take a lenient view when an

application is made for production of the documents under Order 8 Rule 1A (3) of the CPC.

9) Adverting to the facts of the instant case, the defendants sought permission to place on record certified true copy of status report/demarcation report dated 19.01.2023 that was prepared by the Sub Divisional Magistrate, Hiranagar and filed before this Court in another proceeding i.e. WP(C) 2489/2021, titled Prem Nath and ors. vs. Union Territory of J&K and ors. The existence of this report is not in dispute. The only contention that has been raised by the learned Senior Counsel appearing for the petitioner is that the facts mentioned in the said report are contrary to the actual position on spot. It is also not in dispute that the said report contains observations with regards to the rights of the parties vis-a-vis the suit land. The question whether the contents of the report are factually correct or the same are contrary to the position existing on spot, is a matter to be decided by the trial court at the appropriate stage. This aspect of the matter is not to be decided at the time of considering the application for permission to place on record the documents.

10) In view of the above, the trial court was absolutely justified in permitting the defendants to place on record the demarcation report/ status report, particularly having regard to the fact that the issues in the case are yet to be framed and trial of the case is yet to begin. The petitioner/plaintiff will have ample opportunity to assail the veracity of contents of said document while leading evidence or while cross-examining the witnesses to

the said document. No prejudice is going to be caused to the petitioner by taking on record the said document.

11) It has also been contended by learned Senior Counsel appearing for the petitioner that the learned trial court while passing the order has made certain observations as regards to the veracity of the contents of the document in question that may eventually affect the rights of the petitioner in a prejudicial manner. A perusal of the impugned order passed by the learned trial court does not suggest that the trial court has at any place made any observation on merits of the contents of the said document, which can affect the rights of the parties. Therefore, the contention raised by the learned Senior Counsel for the petitioner appears to be a mere apprehension without any basis.

12) In view of what has been discussed herein before, I do not find any ground to interfere with the impugned order passed by the learned trial court. The same is absolutely in accordance with law and there is no illegality or perversity in the said order. The petition, therefore, lacks merit and is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Jammu
29.09.2023
Karam Chand/Secy

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No